

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
Request for Review of Decisions of the Universal Service Administrator	)	CC Docket No. 02-6
By Thirty Individual Schools of the Archdiocese of New York as Listed on Exhibit 1	)	File No. SLD Form 471 as Listed on Exhibit 1 (FYs 2002, 2003, 2004 and 2005)

To: Chief, Wireline Competition Bureau

**CONSOLIDATED PETITION FOR RECONSIDERATION**

Paul C. Besozzi  
Koyulyn Miller  
Squire Patton Boggs (US) LLP  
2550 M Street, N.W.  
Washington, DC 20037  
(202) 457-6000

Counsel for the Thirty Individual  
Schools as Listed on Exhibit 1  
and the Archdiocese of New  
York.

Dated: May 1, 2017

## TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	GROUND FOR RECONSIDERATION .....	3
A.	The Commission Improperly Retroactively Applied Decisions Regarding The Competitive Bidding Rules. ....	3
B.	The Commission Should Reconsider The COMADs For Closed Schools. ....	4
C.	The Commission Should Reconsider The Recovery of <i>De Minimis</i> Amounts.....	5
D.	The Commission Should Reconsider Its Decision To Deny Waivers In Light Of The Lengthy Delay In Acting. ....	6
III.	CONCLUSION AND REQUEST FOR RELIEF .....	12
	EXHIBIT 1.....	13

## **SUMMARY**

Thirty individual schools of the Archdiocese of New York school system (“Schools”) hereby seek reconsideration of the Commission’s summary denial, after over 6 years, of appeals lodged in 2009 and 2010 (“Appeals”) relating to Notification of Commitment Adjustment Letters (“COMADs”) issued by the Universal Service Administrative Company (“Administrator” or “USAC”). All but a handful of the Appeals relate to funds committed over 14 years ago.

In the interim period, 8 of the Schools have closed, most of them well over 5 years ago. Therefore, the Commission should reconsider its decision to now require recovery of funds from beneficiaries no longer operating or participating in the E-Rate Program.

In the case of 6 Schools, including one that is closed, the amount to be recovered should be considered *de minimis* since in each case it is less than \$10,000, a benchmark that the Commission has applied by rule to Universal Service Fund (“USF”) contributors. The same standard should be applied here and the COMADs for these 6 Schools should be rescinded.

In summarily denying the Appeals, the Commission did not specifically address grounds for waiver of any rule violations, which the Schools continue to maintain did not occur under then applicable standards, raised by many of the Schools. The Schools respectfully submit that the lengthy delay, on its face inconsistent with even the most generous interpretation of the Commission’s own rules on disposing of such appeals, warrants reconsideration and indeed an explanation of why there is no “good cause” for waiving any technical violations that occurred in all cases over a decade ago.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Request for Review of Decisions of the Universal Service Administrator	)	CC Docket No. 02-6
	)	
	)	
By Thirty Individual Schools of the Archdiocese of New York as Listed on Exhibit 1	)	File No. SLD Form 471 as Listed on Exhibit 1 (FYs 2002, 2003, 2004 and 2005)
	)	

**To: Chief, Wireline Competition Bureau**

**CONSOLIDATED PETITION FOR RECONSIDERATION**

This is a Consolidated Petition For Reconsideration (“Petition”) filed on behalf of 30 individual Catholic schools that are part of the Archdiocese of New York school system (collectively, the “Schools”). As reflected in Exhibit 1, on specified dates in 2009 and 2010, each of the Schools timely filed, in accordance with Federal Communication Commission (“FCC” or “Commission”) rule sections 54.719-54.721, a Request For Review (“Appeal”) relating to decisions of USAC to rescind and/or recover certain Schools and Libraries Support Mechanism (“E-Rate Program” or “Program”) funding provided to the Schools for the Funding Years (“FY”) reflected on Exhibit 1.<sup>1</sup>

---

<sup>1</sup> Exhibit 1 is a list of the Schools, the date of the individual Appeal, and the recovery amount sought by USAC pursuant to Notification of Commitment Adjustment Letters (“COMADs”) originally issued on or shortly after September 30, 2008. As reflected in Exhibit 1, 8 of the Schools thereon are now closed. Supplements to the Appeals were filed on September 8 and 18, 2009; October 27, 2009; and January 24, 2011 for particular Schools. Hereinafter, these documents are collectively referred to as the Appeal in each case and all are incorporated by reference in this Petition. All the FY 2002 Schools also formally argued that there were grounds for the Commission to exercise its authority to waive any technical rule violations.

On March 30, 2017, the Commission's Wireline Competition Bureau (the "Bureau") summarily denied the Appeals by Public Notice.<sup>2</sup> In accordance with the Notice and Section 1.106 of the Commission's rules, the Schools hereby seek reconsideration of those denials and set forth the following in support thereof.<sup>3</sup>

## **I. INTRODUCTION**

As reflected in Exhibit 1, the vast majority of the Appeals concern FY 2002, which ended in June of 2003, almost 14 years ago. Many of the COMADs were filed after the 5-year "administrative period" established by the Commission.<sup>4</sup> The bulk of the Appeals were first brought over 6 years ago and a few are nearly 8 years old.

During that extended period, the Schools received no communications from the Commission about the agency's need for more time to address the common basis for the COMADs – service provider clerical and administrative assistance in submission of the Form 470. As might be expected, during the last 6 years, a number of the Schools – specifically, 8 – have closed for a variety of reasons, including financial reasons.<sup>5</sup> All but one of the closed Schools shuttered its doors over 5 years ago.

---

<sup>2</sup> FCC Public Notice, *Streamlined Resolution Of Requests Related To Actions By The Universal Service Administrative Company*, DA 17-279 (Wireline Compet. Bur. Mar. 30, 2017) ("Notice"). The Bureau's summary basis for dismissal was "Improper Service Provider Involvement." *Id.* at 4-6.

<sup>3</sup> This Petition is timely filed in accordance with Section 1.4 of the Commission's rules. The 30-day period ended on Saturday, April 29 and thus, by rule, the period is extended to the next business day, May 1.

<sup>4</sup> Although a basis for many of the Appeals relating to the FY 2002 COMADs, the Schools do not seek reconsideration of the Notice decision regarding this issue. *See* Notice at 4, n. 11. The Schools also do not seek reconsideration of the Notice decisions as they relate to any of the Appeals where the COMADs, including those related to specific Funding Request Numbers ("FRN"), did not seek to recover disbursed funds. In doing so, the Schools do not in any way concede that the COMADs relating to that rescinded E-Rate support were appropriate or proper and not subject to the same grounds for reconsideration as set for the herein.

<sup>5</sup> Three additional schools that were the subject of the Appeals, but are not subject to this Petition, also closed (All Saints Elementary, Saint Augustine, and Saint Columba).

For the reasons set forth below, the Schools respectfully submit that the Commission should reconsider its decision to uphold the COMADs and rescind them as indicated.

## **II. GROUNDINGS FOR RECONSIDERATION**

### **A. The Commission Improperly Retroactively Applied Decisions Regarding The Competitive Bidding Rules.**

The Commission has long required compliance with the competitive bidding standards “as they existed at [the] time” of the alleged violation.<sup>6</sup> Yet the Notice cites a 2012 decision to support its decision denying the Appeals on the grounds of “clerical or data entry assistance.”<sup>7</sup>

The Schools respectfully submit that the operative guidance regarding service provider involvement with respect to the Form 470 was the *MasterMind* decision, which the Notice also cites.<sup>8</sup> However, in *MasterMind*, the Commission specifically proscribed service provider inclusion as the contact person on the Form 470, executing the Form 470, and preparing requests for purchase (“RFPs”) related to the Form 470. That decision then specifically stated:

To the extent that the applications at issue here were denied by SLD in instances that the Applicant did not name a MasterMind employee as the contact person and a MasterMind employee did not sign the associated Forms 470 or 471, we do not believe that there has been a violation of the competitive bidding process. Granting these requests for review, therefore, is not inconsistent with the Commission’s rules. Accordingly, we grant the requests for review and remand those applications to SLD for further processing.<sup>9</sup>

---

<sup>6</sup> See *Requests for Review of Decisions of the Universal Service Administrator by Colegio Nuestra Senora del Carmen et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 15568, ¶12 (2008); see also *Requests for Review of Decisions of the Universal Service Administrator by Cornerstones of Care, et al.*, CC Docket No. 02-6, Order, DA 10-2071, pp. 8-9, ¶15 (Wireline Compet. Bur. 2010).

<sup>7</sup> Notice at 4, n. 11.

<sup>8</sup> *Request For Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028 (2000) (“*MasterMind*”); see, e.g., *Request for Review of the Decision of the Universal Service Administrator by Dickenson County Public Schools*, CC Docket Nos. 96-45 & 97-21, Order, 17 FCC Rcd 15747 (Telecom. Access Pol. Div. 2002); *Request for Review of the Decision of the Universal Service Administrator by Consorcio de Escuelas y Bibliotecas de Puerto Rico*, CC Docket Nos. 96-45 & 97-21, Order, 17 FCC Rcd 13624 (Wireline Compet. Bur. 2002).

<sup>9</sup> *Mastermind* ¶14.

The Notice did not address this distinction and the Schools respectfully submit that they did not violate *MasterMind*. The Commission has not justified applying standards other than those in effect pursuant to that decision. It must reconsider its decision to retroactively apply years-later rulings to applications filed by undermanned and non-E-Rate-expert schools as a justification to recover funds used for the purpose for which they were authorized.

**B. The Commission Should Reconsider The COMADs For Closed Schools.**

The 6½ years that have passed since most of the Appeals were first filed has resulted in a total of 8 of the 30 Schools now being closed, primarily for financial reasons.<sup>10</sup> These E-Rate applicants and beneficiaries are no longer generating revenues which might be used to repay the amounts being sought, even over time. They are no longer participating in the E-Rate Program and have not been for some time.

The Commission originally directed that funds be recovered from the “beneficiary” or the service provider, based on who committed the alleged violation.<sup>11</sup> To the Schools’ knowledge, the Commission has not addressed the matter of recovery of E-Rate funds after many years when the beneficiary has closed its doors and is no longer participating in the E-Rate Program or even eligible to do so. Under such circumstances, particularly when the bulk of funds to be recovered were expended well over a decade ago, the Schools respectfully submit it would be unfair and unequitable to now seek to impose on, for example, the inner-city Catholic parishes with which the closed Schools were formerly affiliated, the obligation to repay these long-ago expenditures. This factor

---

<sup>10</sup> The closed Schools are reflected by the \* on Exhibit 1. Most of the closures were over 5 years ago. Two of the schools (Resurrection and Sacred Heart Private School) already were closed at the time that the original Appeals were filed in 2010. The import of this issue was not raised in 2010, but in view of the additional number of closed Schools, it is properly being raised now.

<sup>11</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15814, ¶21 (2004) (*Fifth Report*); see *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 02-6 *et al.*, CC Docket No. 96-45 *et al.*, Order On Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252 (2004).

alone warrants that the Commission reconsider its apparent unwillingness to waive any technical rule violations and rescind the COMADs at least for the Schools that have been closed for some time.

**C. The Commission Should Reconsider The Recovery of *De Minimis* Amounts.**

In setting standards for recovery of funds, the Commission directed USAC not to seek to recover disbursed E-Rate funds when the administrative costs of seeking recovery exceed the amounts of funds to be recovered.<sup>12</sup> At the time, the Commission also directed USAC to submit information regarding the costs of seeking recovery so that a *de minimis* amount could be established.<sup>13</sup> According to USAC, it submitted this information to the Commission in January 2005.<sup>14</sup> USAC has provided no guidance that the Commission has formally established such an amount in this context.

However, as USAC itself noted, the Commission has established a *de minimis* standard for carrier contributions to the Universal Service Fund.<sup>15</sup> Section 54.708 of the Commission's rules provides: "If a contributor's contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution . . . ."<sup>16</sup> In the absence of any other standard, that *de minimis* standard should be applied to the recoveries here. In the case of 6 Schools, the amount sought to be recovered by the COMAD is less than \$10,000.<sup>17</sup> Furthermore, one of these 6 Schools is closed and is no longer operational.<sup>18</sup>

---

<sup>12</sup> *Fifth ReO* ¶35.

<sup>13</sup> *Id.*

<sup>14</sup> Universal Service Administrative Company, Schools and Libraries Program, *Administrative Procedures*, CC Docket No. 02-6, p. 9 (Oct. 31, 2016) (*USAC Administrative Procedures*). The *Fifth ReO* requires USAC to submit these procedures to the FCC each year.

<sup>15</sup> *Id.*

<sup>16</sup> 47 C.F.R. § 54.708.

<sup>17</sup> These Schools are Our Lady of Pompei, St. Charles Borromeo, St. Ann (Bronx), St. Dominic, St. Joseph (Yorkville), and Our Lady Of Grace.

<sup>18</sup> This School is St. Dominic.



USAC has noted its obligation to “administer[] the program in an efficient and effective manner to reduce operating costs by conserving administrative resources and protecting against waste by not seeking recovery when the administrative cost of recovering the funds is greater than the amount for which recovery is sought.”<sup>19</sup> Petitioners respectfully submit that the Commission should reconsider its decision with respect to these 6 schools and apply a *de minimis* standard of \$10,000 and order the COMADs rescinded.

**D. The Commission Should Reconsider Its Decision To Deny Waivers In Light Of The Lengthy Delay In Acting.**

Most of the Schools formally asked that if the Commission was inclined to conclude that the COMADs were timely and there was a technical violation of the then-applicable competitive bidding rules, a waiver of the requirement was wholly justified. The Notice does not address these waiver requests or the grounds for apparently denying them.<sup>20</sup>

The Commission’s rules allow waiver of a Commission rule “for good cause shown.”<sup>21</sup> The Commission has extended this authority to waivers of USAC rules. For example, in the *Bishop Perry Order*, the Commission noted that it “has vested in USAC the responsibility of administering the application process for the schools and libraries universal service support mechanism.”<sup>22</sup> Pursuant to that authority, USAC developed procedures relating to the application and appeals process.<sup>23</sup>

---

<sup>19</sup> *USAC Administrative Procedures* at 10.

<sup>20</sup> The Schools respectfully submit that this neglect, in and of itself, raises substantive procedural issues. Agency action is arbitrary and capricious if it has “entirely failed to consider an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983). The Commission has provided no explanation of its decision not to address or explain the bases for denial of the waivers.

<sup>21</sup> 47 C.F.R. § 1.3.

<sup>22</sup> *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, ¶4 (2006) (“*Bishop Perry Order*”).

<sup>23</sup> The *Bishop Perry Order* dealt with USAC application procedures known as “minimum processing standards.” *Id.*

Thus, in *Bishop Perry*, the Commission applied the 47 C.F.R. § 1.3 waiver rule to allow a limited waiver of USAC procedures.<sup>24</sup>

The Commission has established the following guidance for determining whether waiver is appropriate:

A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>25</sup>

Strict compliance with the Commission's rules in the special circumstances involving the Schools would not be in the public interest. In *Bishop Perry*, the FCC granted 196 appeals of decisions denying funding due to "clerical or ministerial errors in the application."<sup>26</sup> In that case, the FCC found good cause to waive the minimum processing standards established by USAC, finding that "rigid compliance with the application procedures does not further the purposes of section 254(h) or serve the public interest."<sup>27</sup> Many of the appeals in *Bishop Perry* involved staff mistakes or

---

<sup>24</sup> *Id.* ¶1.

<sup>25</sup> *Requests for Review by Richmond County School District*, CC Docket No. 02-6, Order, 21 FCC Rcd 6570, 6572, ¶5 (2006) (internal references omitted) (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972)).

<sup>26</sup> *Bishop Perry Order* ¶1.

<sup>27</sup> *Id.* ¶11. The Commission departed from prior Commission precedent, noting that the departure was "warranted and in the public interest." *Id.* at ¶9. The Commission noted that many of the rules at issue were procedural, and that a waiver is consistent with the purposes of Section 254, which directs the Commission to "enhance . . . access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries." *Id.*

mistakes made as a result of staff not being available.<sup>28</sup> The Commission granted the waivers for good cause, noting that:

[T]he primary jobs of most of the people filling out these forms include school administrators, technology coordinators and teachers, as opposed to positions dedicated to pursuing federal grants, especially in small school districts. Even when a school official has learned how to correctly navigate the application process, unexpected illnesses or other family emergencies can result in the only official who knows the process being unavailable to complete the application on time. Given that the violation at issue is procedural, not substantive, we find that the complete rejection of each of these applications is not warranted. Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that denial of funding in these cases would inflict undue hardship on the applicants.<sup>29</sup>

The Schools respectfully submit that the same logic applies to the circumstances surrounding the Schools' conduct here. For example, 15 years ago, when the FY 2002 application process started, the E-Rate Program was still relatively young.<sup>30</sup> The Schools had no E-Rate consultant or staff expert to advise them on the intricacies of the E-Rate Program requirements.<sup>31</sup> In many cases, it was the principals of the Schools for whom the effort to request E-Rate Program support was an added duty.

Any ministerial assistance provided by the service provider in these cases must be considered in that context. The Schools did not intend to defraud or abuse the E-Rate Program, nor was there

---

<sup>28</sup> *Id.* ¶13.

<sup>29</sup> *Id.* ¶14.

<sup>30</sup> The Commission has concluded that such timing is relevant to waiver determinations involving allegations of competitive bidding violations. *See Request for Review of a Decision of the Universal Service Administrator by Idaho Falls School District 91*, CC Docket No. 02-6, Order, 25 FCC Rcd 5512, 5516, ¶9 (Wireline Compet. Bur. 2010) (error took place in the very early stages of the E-rate program when applicants and service providers were not yet familiar with the operation of the program).

<sup>31</sup> The Commission has recognized that under such circumstances rule waivers are appropriate. *See Requests for Waiver of Decisions of the Universal Service Administrator by Children of Peace School*, CC Docket No. 02-6, Order, 25 FCC Rcd 5492, 5496, ¶7 (Wireline Compet. Bur. 2010).

evidence here of any such activity by the Schools.<sup>32</sup> Nor is there any evidence of any waste, fraud, or abuse or misuse of funds themselves.<sup>33</sup>

Furthermore, the imposition of a requirement to reimburse the requested funds under these circumstances well over a decade after they were originally approved and expended would impose an undue hardship on the Schools.<sup>34</sup> There is no evidence that the Schools acted in other than good faith.<sup>35</sup> Requiring repayment would not further the purpose of preserving and advancing access to universal service support for schools and libraries.<sup>36</sup> Under such circumstances, it would be inequitable to not reconsider the appropriateness of a waiver.<sup>37</sup>

---

<sup>32</sup> See *Request for Review of the Decision of the Universal Service Administrator by New Haven Free Public Library*, CC Docket No. 02-6, Order, 23 FCC Rcd 15446, 15449, ¶7 (Telecom. Access Pol. Div. 2008); *Request for Review of the Decision of the Universal Service Administrator by the District of Columbia Public Schools*, CC Docket No. 02-6, Order, 23 FCC Rcd 15585, 15588, ¶6 (Telecom. Access Pol. Div. 2008); *Request for Review of the Decision of the Universal Service Administrator by Tekoa Academy of Accelerated Studies*, CC Docket No. 02-6, Order, 23 FCC Rcd 15456, 15458-59, ¶6 (Telecom Access Pol. Div. 2008).

<sup>33</sup> See *Requests for Review of Decisions of the Universal Service Administrator by Broaddus Independent School District et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 15547, 15551-52, ¶12 (Telecom. Access Pol. Div. 2008).

<sup>34</sup> See *Request for Review of a Decision by the Universal Service Administrator by Radford City Schools*, CC Docket No. 02-6, Order, 23 FCC Rcd 15451, 15453, ¶4 (Telecom. Access Pol. Div. 2008); *Request for Review of a Decision of the Universal Service Administrator by Grand Rapids Public Schools*, CC Docket No. 02-6, Order, 23 FCC Rcd 15413, 15416, ¶6 (Telecom. Access Pol. Div. 2008).

<sup>35</sup> See *Request for Waiver of the Decision by the Universal Service Administrator by Great Rivers Education Cooperative, Forrest City, Arkansas*, CC Docket No. 02-6, Order, 21 FCC Rcd 14115, 14119, ¶9 (Wireline Compet. Bur. 2006).

<sup>36</sup> See *Request for Review of a Decision by the Universal Service Administrator by Adams County School District 14*, CC Docket No. 02-6, Order, 22 FCC Rcd 6019, 6022, ¶8 (2007).

<sup>37</sup> See *Requests for Review of Decisions of the Universal Service Administrator by Approach Learning and Assessment Centers et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 15510, 15513-14, ¶4 (Telecom. Access Policy Div. 2008).

Moreover, the lengthy delay in the Commission's own action only exacerbates the impact of requiring repayment now, in many cases nearly 14 years after the end, in the case of most of the Appeals, of the relevant FY. The Commission's rules provide as follows:

**§ 54.724 Time periods for Commission approval of Administrator decisions.**

(a) The Wireline Competition Bureau shall, within ninety (90) days, take action in response to a request for review of an Administrator decision that is properly before it. The Wireline Competition Bureau may extend the time period for taking action on a request for review of an Administrator decision for a period of up to ninety days. The Commission may also at any time, extend the time period for taking action of a request for review of an Administrator decision pending before the Wireline Competition Bureau.

(b) The Commission shall issue a written decision in response to a request for review of an Administrator decision that involves novel questions of fact, law, or policy within ninety (90) days. The Commission may extend the time period for taking action on the request for review of an Administrator decision. The Wireline Competition Bureau also may extend action on a request for review of an Administrator decision for a period of up to ninety days.

The Schools have found no amendment or FCC interpretation of this rule that authorizes the FCC to take 6 ½ years (and in some cases over 7 years) to act on E-Rate appeals.<sup>38</sup>

The Commission long ago “committed to timely resolution of all [E-Rate] appeals before us.”<sup>39</sup> It has also recognized, in setting a 5-year “administrative limitation” on recovery, that

---

<sup>38</sup> The Commission's rule aside, the U.S. Court of Appeals for the D.C. Circuit has said that while “[t]here is ‘no per se rule as to how long is too long’ to wait for agency action, [] a reasonable time for agency action is typically counted in weeks or months, not years.” *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004) (quoting *In re Int’l Chem. Workers Union*, 958 F.2d 1144, 1149 (D.C. Cir. 1992)); see also *Midwest Gas Users Ass’n v. Federal Energy Regulatory Commission*, 833 F.2d 341, 359 (D.C. Cir. 1987) (“This court has stated generally that a reasonable time for an agency decision could encompass ‘months, occasionally a year or two, but not several years or a decade.’”) (quoting *MCI Telecommunications Corp. v. Federal Communications Commission*, 627 F.2d 322, 340 (D.C. Cir. 1980)).

<sup>39</sup> *Federal-State Board on Universal Service*, CC Docket Nos. 96-45 & 97-21, Order, 15 FCC Rcd 9336, 9338, ¶6 (2000).

beneficiaries have a “need for certainty and closure in their E-Rate application processes.”<sup>40</sup> The equities of this situation must be taken into consideration, particularly when the current leadership of the Commission has decried lengthy delays in acting on pending requests to the Commission.<sup>41</sup> This factor must be added to reconsideration and the conclusion that “good cause” exists for waiving any technical violations that occurred over a decade ago.

---

<sup>40</sup> *Application for Review of a Decision of the Wireline Competition Bureau by Net56, Inc.*, CC Docket No. 02-6, Memorandum Opinion and Order, 32 FCC Rcd 963, 966, ¶9 (2017).

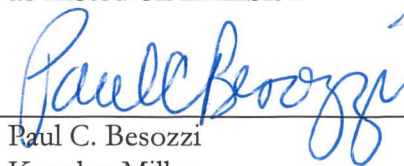
<sup>41</sup> *See Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Memorandum Opinion and Order, 31 FCC Rcd 2352, 2364 (2016) (Statement of Commissioner Ajit Pai) (Finding “unacceptable” and “troubling” the possible denial of a party’s administrative rights through the Commission’s “long delay” in adjudicating a dispute “[f]or two years.”); *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services* et al., GN Docket No. 14-177 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8279 (2016) (Statement of Commissioner Ajit Pai) (“Petitioners asked the FCC to adopt service rules for these bands years ago. (It shouldn’t have taken this long for us to move forward.)”); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks* et al., WC Docket No. 14-192 et al., Memorandum Opinion and Order, 31 FCC Rcd 6157, 6246 (2015) (Statement of Commissioner Michael O’Rielly) (Encouraging action on a “long-pending” petition that “basically has been sitting idle for three years.”); *see also Numbering Policies for Modern Communications* et al., WC Docket No. 13-97 et al., Report and Order, 30 FCC Rcd 6839, 6916 (2015) (Statement of Commissioner Michael O’Rielly) (“While I appreciate all of the work that has gone into this item, the obvious failure here is taking ten years to complete any proceeding.”); *2004 and 2006 Biennial Regulatory Reviews – Streamlining and Other Revisions of Parts 1 and 17 of the Commission’s Rules Governing Construction, Marking and Lighting of Antenna Structures* et al., WT Docket No. 10-88, Report and Order, 29 FCC Rcd 9787, 9845 (2014) (Statement of Commissioner Michael O’Rielly) (“The question that has to be asked is why did it take nine years to get this item before the Commission for a vote? We simply must do better than this.”).

### III. CONCLUSION AND REQUEST FOR RELIEF

For all of the foregoing reasons, the Schools and the Archdiocese of New York respectfully submit that the Commission should reconsider its action in the Notice and rescind the COMADs that relate to the thirty individual Schools listed in Exhibit 1.

Respectfully submitted,

**Thirty Individual Schools  
of the Archdiocese of New York  
as Listed on Exhibit 1**



---

Paul C. Besozzi  
Koyulyn Miller  
Squire Patton Boggs (US) LLP  
2550 M Street, N.W.  
Washington, DC 20037  
(202) 457-6000

Counsel for the Thirty Individual Schools as  
Listed on Exhibit 1 and the Archdiocese of  
New York

Dated: May 1, 2017

## **EXHIBIT 1**

### **Archdiocese of New York Schools – FYs 2002, 2003, 2004 and 2005 E-Rate Appeals**

School Name	BEN	Date of Request For Review	Form 470 And Funding Year	Form 471	FRN	COMAD Date	Original Funding Commitment	Funds Disbursed to Date	Disbursed Funds USAC Claims Should be Recovered from Service Provider/Applicant
Blessed Sacrament School	10008	9/28/2010	687200000379424 FY 2002	302187	796527(IC) 796528(IA)	9/30/2008	\$62,994.60 \$13,500	\$29,541.60 \$9,720	\$29,541.60 \$9,720
Immaculate Conception School	10473	9/28/2010	790290000379426 FY 2002	295277	756725(IA) 756742(IC)	10/1/2008	\$13,500 \$39,801.60	\$12,960 \$39,801.60	\$12,960 \$39,801.60
Immaculate Conception G School	10691	9/28/2010	979820000379425 FY 2002	302191	796580(IC)	10/14/2008	\$39,531.60	\$36,855	\$36,855
Immaculate Conception G School	10691	6/17/2009	37740000424541 FY 2003	349380	941033(IC) 941034(IA)	10/6/2008	\$66,150 \$12,960	\$66,150 \$12,960	\$66,150 \$12,960
Immaculate Conception G School	10691	5/27/2009	854970000455828 FY 2004	388978	1067034(IC) 1067036(IA) 1067038(IC) 1067040(IC) 1067041(IC)	10/6/2008	\$10,800 \$14,580 \$42,300 \$10,800 \$71,280	\$10,800 \$14,580 \$42,299.99 \$10,800 \$71,280	\$10,800 \$14,580 \$42,299.99 \$10,800 \$71,280
Immaculate Conception G School	10691	5/27/2009	675770000500853 FY 2005	440709	1222900(IA) 1222901(IA) 1224626(IC)	10/6/2008	\$27,000 \$19,440 \$10,800	\$18,360 \$16,470 \$8,100	\$18,360 \$16,470 \$8,100
Incarnation Elementary School	10184	9/28/2010	670910000379116 FY 2002	302176	796595(IC) 796598(IA)	9/30/2008	\$16,572.60 \$13,500	\$16,572.60 \$13,500	\$16,572.60 \$13,500
Mt. Carmel/Holy Rosary	10215	9/28/2010	850770000379429 FY 2002	302177	796612(IC) 796613(IA)	9/30/2008	\$15,066 \$13,500	\$15,066 \$9,720	\$15,066 \$9,720
Our Lady Queen of Angels	10108	9/29/2010	487080000379129 FY 2002	302184	796682(IC) 796685(IA)	9/30/2008	\$10,746 \$15,120	\$10,746 \$9,720	\$10,746 \$9,720
Our Lady of Pompeii	9936	9/28/2010	349300000380184 FY 2002	303933	798527(IA)	10/1/2008	\$7,950	\$5,850	\$5,850



School Name	BEN	Date of Request For Review	Form 470 And Funding Year	Form 471	FRN	COMAD Date	Original Funding Commitment	Funds Disbursed to Date	Disbursed Funds USAC Claims Should be Recovered from Service Provider/Applicant
Resurrection School*	10239	9/28/2010	973670000379450 FY 2002	302192	796699(IC) 796703(IC) 796704(IA)	9/30/2008	\$22,950 \$2,124 \$13,500	\$22,950 \$2,124 \$9,720	\$22,950 \$2,124 \$9,720
Sacred Heart Private School*	10621	9/28/2010	855470000379449 FY 2002	302200	796777(IC) 796781(IC) 796782(IA)	9/30/2008	\$14,196.60 \$1,449 \$13,500	\$14,196.60 \$1,449 \$9,720	\$14,196.60 \$1,449 \$9,720
Santa Maria	10620	9/28/2010	907820000379448 FY 2002	302201	796808(IC) 796810(IA)	9/30/2008	\$12,906 \$13,500	\$12,906 \$9,720	\$12,906 \$9,720
St. Aloysius*	10092	9/28/2010	260670000379138 FY 2002	302203	797401(IC) 797404(IC) 797409(IA)	9/30/2008	\$47,449.80 \$3,150 \$15,120	\$47,449.80 \$3,150 \$15,120	\$47,449.80 \$3,150 \$15,120
St. Ann - Manhattan	10112	9/28/2010	160460000379168 FY 2002	302209	797470(IC) 797475(IA)	9/30/2008	\$20,989.80 \$13,500	\$20,989.80 \$9,720	\$20,989.80 \$9,720
St. Ann - Bronx	10678	9/28/2010	414270000379150 FY 2002	302206	797435(IA)	9/30/2008	\$7,500	\$5,400	\$5,400
St. Anselm	10472	9/29/2010	931510000379204 FY 2002	302212	797505(IC) 797508(IC) 797510(IA)	9/30/2008	\$34,650 \$2,124 \$13,500	\$34,650 \$2,124 \$9,720	\$34,650 \$2,124 \$9,720
St. Brigid	9882	9/29/2010	670720000379438 FY 2002	302216	797566(IC) 797569(IA)	9/30/2008	\$15,870.60 \$13,500	\$15,870.60 \$9,720	\$15,870.60 \$9,720
St. Charles Borromeo	10145	9/29/2010	383820000379216 FY 2002	302219	797606(IA)	9/30/2008	\$13,500	\$9,720	\$9,720
St. Dominic*	10615	9/29/2010	126520000379281 FY 2002	302221	797675(IC) 797678(IA)	9/30/2008	\$114,493.50 \$13,500	\$114,493.50 \$9,720	\$114,493.50 \$9,720
St. Dominic*	10615	5/27/09	377220000487934 FY 2004	41050	1124696(IA)	10/2/2008	\$8,100	\$8,100	\$8,100
St. Elizabeth School	10171	9/29/2010	459880000379287 FY 2002	302223	797702(IC) 797703(IC) 797706(IA)	9/30/2008	\$34,641.00 \$2,124.00 \$15,120.00	\$34,641.00 \$2,124.00 \$15,120.00	\$34,641.00 \$2,124.00 \$15,120.00
St. Francis of Assisi	10660	9/29/2010	261340000379296 FY 2002	302224	797730(IC) 797731(IA)	9/30/2008	\$61,569 \$13,500	\$61,569 \$13,500	\$61,569 \$13,500
St. John's Elementary	10635	9/28/2010	607220000379305 FY 2002	302225	797768(IA)	9/30/2008	\$12,000	\$12,000	\$12,000

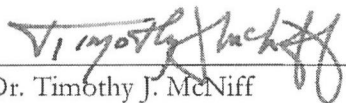
School Name	BEN	Date of Request For Review	Form 470 And Funding Year	Form 471	FRN	COMAD Date	Original Funding Commitment	Funds Disbursed to Date	Disbursed Funds USAC Claims Should be Recovered from Service Provider/Applicant
St. Joseph of the Holy Family*	10076	9/28/2010	976270000380164 FY 2002	302228	797816(IA) 797811(IC) 797815(IA)	9/30/2008	\$13,500 \$10,746 \$2,124	\$9,720 \$10,746 \$2,124	\$9,720 \$10,746 \$2,124
St. Joseph School - Bronx	10527	9/28/2010	414050000379447 FY 2002	302233	797848(IC) 797853(IC) 797857(IA)	9/30/2008	\$12,906 \$1,449 \$13,500	\$12,906 \$1,449 \$13,500	\$12,906 \$1,449 \$13,500
St. Joseph - Monroe*	9848	9/28/2010	891680000379325 FY 2002	302231	797900(IC) 797908(IA)	9/30/2008	\$29,241 \$13,500	\$29,241 \$9,720	\$29,241 \$9,720
St. Joseph – Yorkville	10273	9/28/2010	803230000379317 FY 2002	302230	797966(IA)	9/30/2008	\$12,000	\$8,640	\$8,640
St. Luke	10463	9/28/2010	712800000383242 FY 2002	301724	774680(IC) 774693(IA)	10/1/2008	\$47,700 \$14,040	\$47,646 \$14,040	\$47,646 \$14,040
St. Mark the Evangelist	10228	9/28/2010	609800000379420 FY 2002	302234	798114(IC) 798118(IC) 798124(IA)	9/30/2008	\$16,686 \$2,124 \$13,500	\$16,686 \$2,124 \$13,500	\$16,686 \$2,124 \$13,500
St. Mary School	10668	9/28/2010	640190000379440 FY 2002	302237	798152(IC) 798156(IC) 798160(IA)	9/30/2008	\$21,762 \$2,124 \$13,500	\$17,550 \$2,124 \$9,720	\$17,550 \$2,124 \$9,720
St. Michael Academy*	9812	9/28/2010	946890000379442 FY 2002	302239	798200(IC) 798205(IC) 798209(IA)	9/30/2008	\$28,116 \$2,124 \$13,500	\$28,116 \$2,124 \$9,720	\$28,116 \$2,124 \$9,720
St. Paul School*	10216	9/28/2010	401440000379422 FY 2002	302240	798241(IC) 798243(IC) 798244(IA)	10/1/2008	\$16,092 \$2,124 \$13,500	\$16,092 \$2,124 \$9,720	\$16,092 \$2,124 \$9,720
Our Lady of Grace	10671	6/17/2009	612520000424588 FY 2003	340619	941058(IC) 941060(IA)	10/6/2008	\$56,925.90 \$12,960	\$56,925.90 \$12,960	\$56,925.90 \$12,960
Our Lady of Grace	10671	6/17/2009	178250000455827 FY 2004	391525	1072548(IA)	10/6/2008	\$8,100	\$8,100	\$8,100

**\*=School Closed**

## DECLARATION

I, Dr. Timothy J. McNiff, am the Superintendent of Schools for the Archdiocese of New York, a position that I have occupied since 2008. As Superintendent, I am generally familiar with the E-Rate Program and the participation of the schools of the Archdiocese in that Program. I am further aware that on March 30, 2017, the Federal Communications Commission's Wireline Competition Bureau summarily denied by Public Notice the Appeals discussed in the foregoing Consolidated Petition for Reconsideration.

The foregoing Petition was prepared pursuant to my ultimate direction, supervision, and control. I declare under penalty of perjury that the factual statements therein relating to the participation of the Schools that is the subject of the Petition, including factual statements regarding the financial status of the Schools and as to those Schools that are now closed, are true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Dr. Timothy J. McNiff

Dated: May 1, 2017

## **CERTIFICATE OF SERVICE**

I, Benjamin D. Tarbell, certify on this 1st day of May 2017, that a copy of the foregoing “Consolidated Petition For Reconsideration” has been served via electronic mail or first class mail, postage pre-paid, to the following:

Kris Monteith  
Acting Bureau Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
[Kris.Monteith@fcc.gov](mailto:Kris.Monteith@fcc.gov)

Ian Forbes  
Deputy Division Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
[Ian.Forbes@fcc.gov](mailto:Ian.Forbes@fcc.gov)

Ryan Palmer  
Division Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
[Ryan.Palmer@fcc.gov](mailto:Ryan.Palmer@fcc.gov)

Letter of Appeal  
Schools and Libraries Program  
Correspondence Unit  
30 Lanidex Plaza West  
P.O. Box 685  
Parsippany, NJ 07054-0685  
[appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org)

/s/ Benjamin D. Tarbell  
Benjamin D. Tarbell